

CHAPTER X

JUDICIAL AND CLERICAL OFFICERS;
LAWS GOVERNING INHERITANCE

THERE are in the Rif two classes of officials who concern themselves with judicial and clerical functions: the "clerk," or *adl* (plural *adul*), and the "judge," or *kedhi*. The former is something between a town clerk and minor judge, and the latter a supreme court of appeal. Both concern themselves only with civil, never with criminal, disputes. 693 624

The clerk is a former student who specialized in the cantonal mosque in the study of law, rather than in the usual study of magic and religion: some clerks, however, indulge in magical practices on the side as an additional source of income. The clerk takes pains to keep this second profession secret, lest he be expelled from office. Most clerks spend longer than the average period at study, and attend several different mosques in the course of their preparation. [797]

There is at least one clerk in every *bone*. Any person who is qualified by his training may set up as a clerk, but must receive the consensus of local approval before he is entrusted with enough business to make this occupation profitable. A clerk must be dignified and pious. 624

The clerk is often the schoolmaster of the *bone* as well. In smaller *bones* it is usually an economic necessity for one man to fulfill these two offices, consequently the terms "schoolmaster" and "clerk" have become somewhat confused. A clerk is often called schoolmaster, but a schoolmaster who is not a clerk is never called clerk. [875]

The duties of the clerk include writing and reading letters for illiterate persons, settling controversies as to ownership of property, making out and administering wills, and drawing up documents of sale for landed property and documents of marriage and divorce. He is also called upon to slaughter animals upon ceremonial occasions. [211]

In making out a document of marriage, the clerk writes out the names of the bride and groom, and the amount paid for the bride. He gives the paper to the bride and makes a duplicate, which he keeps. His signature renders the document valid. He similarly makes out divorce papers, which he gives to the woman, who can thus prove that she is no longer under obligation to her husband. [585] [586]

When the clerk makes out the document for a land sale, he takes the old document from the seller, and gives both old and new papers to the purchaser. Each time a piece of land changes hands a new paper is made out, and the present owner has in his possession all of the extant bills of sale for that piece of land. When a piece is subdivided the heir of the owner of the original piece at the time of its subdivision keeps the papers recording transfers prior to this subdivision. 624 432

When a man wishes to sell some of the land which has been in his family since time immemorial, and for which there is no paper, he informs the clerk, who advertises for any other claim to this land, either written or oral, and finding none makes a bill of sale.

* The usual Arab notary.

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One of the clerk's most troublesome duties is keeping track of irrigation property. If a stream commences in the property of a certain man, that man has the right to build a ditch within his own property to irrigate his own fields, and that water belongs exclusively to him. If he wishes to sell the rights to some of the water to a neighbor, he allows the neighbor to lead water off the stream below the place at which he leads off his own water, and likewise allows this neighbor to build a ditch across his land to the purchaser's fields. The purchaser must pay for the water rights and for the narrow strip of land on which the ditch runs. The clerk makes out papers for the transfer of these rights, and signs them.

He also makes out papers for other irrigation complications. One man may sell the right of one day's water per year to another man through whose land his ditch passes. If a ditch is led off from a large stream which flows through a number of villages, no one owns the original water, but any man who constructs a ditch from it has the right to the water which is led off, once he has paid for the land which the ditch crosses. Men who construct such ditches usually sell so many shares in it that in time it becomes almost communal. The shares are sold on the basis of so many day's water a year per man. If a dry year comes or the water is low, each man receives a reduced share of the water proportionate to his original allowance.

If a ditch owner has allowed another man to lead off part of his water into another ditch, under time limit or restriction, when a season of drought comes they take turns, day by day, so as to divide equally what little there is of it.

If in a series of step-terraces, built one above the other, an avalanche covers more than the top one, the owners of all the terraces in the series have to work together to remove the stones. If a cloudburst pushes these same terraces down the side of the mountain so that the top one has lowered its position, and the bottom one has fallen into the stream and its earth been washed away, the owners of the terraces go to the clerk and find out exactly how much of this particular terrace land each of them possessed. If they each owned a third, the clerk measures, with string, what arable land remains, and divides it up proportionately, so that the order of ascension is the same as before, but the area of each is proportionately reduced. If, however, the bottom one suffers loss through the action of the stream and nothing has happened to the upper ones, the owner of the bottom terrace has to suffer his loss alone. Any small loss of earth or manure due to a storm may not be recovered; the owner of the lower terrace into which it has been washed may keep it. If the boundary wall between two terraces has been broken in by the storm, and dirt has washed over the stones, making the boundary questionable, the clerk comes with the papers of the original sale and a cord, and measures the terraces anew. Then the owner of the upper terrace must build another retaining wall, and cannot recover the earth which he has lost, unless, as above stated, the upper boundary of his land has slumped downhill and the bottom terrace has fallen into the stream.

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When a man's tree thrusts its branches over a boundary so that it hangs over another man's land and makes shade on it, preventing the growth of grain or vegetables, the owner of the shaded land may protest and demand that that part of the tree be removed. The clerk forbids cutting it, however, and orders the owner of the tree to give a fourth of its fruit to the other man.

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The clerk also keeps track of the olive press, and of the succession of those entitled to use it. If a neighboring bone has no press he lets it use the one in his territory, before the

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actual owners of the machine are allowed to do so; and he collects from them the customary divisions of the oil which they squeeze. The village council of each *bone* makes out the list and the clerk writes it down and sees that it is followed. 624
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Another duty of this latter official is making out papers of adoption for strangers who come into the *bone* to live and who wish to become affiliated with it. [597]

The clerk also has charge of wills and inheritance. The head of each family may make a will on his deathbed, or at some time when he fears imminent death. To do this he summons the clerk, who writes down the terms of the bequests and takes the paper away with him. After the man has died he produces this paper, makes its contents public, and administers the estate. 624
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Although most men, in making their wills, follow the traditional rules of inheritance, some bequeath their property unequally among their heirs, at times cutting individuals off entirely, and leave property to mosques or saints' tombs. No man is permitted, however, to disinherit his wife or wives.

In each tribe there is supposed to be a judge, appointed by the tribal council, and holding his office for life or good behavior. He has received a diploma from one of the four institutions previously mentioned. His appointment does not usually come, however, until long after his fulfilment of the requirements for this position. He is almost always a native of the tribe in which he is employed. 693

There was one in Beni Urriaghel, one in Beni Tuzin, and one in Gzennaya, at the time the Christians entered. The first judge in the Rif in modern times was Si Abd el Rahman of the Beni Yunes of the Gzennaya, who had dwelt long in Fez and married a Fezzi wife. The Gzennaya and Beni Urriaghel decided, about fifty years ago, that they would like to have a judge, and therefore sent men of the Gzennaya to Fez to persuade Si Abd el Rahman to come. On the way back from Fez, the Beni Ulid, who did not know that he was a judge, attacked him and his bodyguard in the night, killing him and capturing his wife and children. What remained of the bodyguard returned to the Rif and called together a great council of the tribes of Gzennaya, Beni Urriaghel, Tamsaman, Beni Tuzin, Beni Amart, Beni Ulishk, Beni Said, and Metalsa. All these councillors, with their retainers, invaded Beni Ulid and devastated it, taking back the prisoners and loot, and exacting a fine of four thousand five hundred dollars. 693
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Si Abd el Rahman's eldest son was made judge in his place, after him his brother, and after his brother his sons, in turn. Beni Urriaghel and Beni Tuzin later each established a judge, certified by that of Beni Yunes. Several others were set up and deposed in later times. 693

Every year each *fith* presents the judge with a cow, five or six goats, and large quantities of all staple agricultural products. The judge in this way receives a large income, but is expected to spend most or all of it on hospitality. He settles disputes concerning landed property. Contestants bring their papers of ownership to him, and he decides which one really owns the property, then signs and seals the paper of the winner. The plaintiffs bring him presents of meat and sugar — any further gift would be considered bribery.

In the Senhaja Sghir the Sherif of Targuist acts as judge, except in Taghzruth, where there has been a judge for generations. Until the time of Abd el Krim, however, the judge of Taghzruth was influenced by the Sherif of Targuist.

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the fqih, fed by turn (nubth), receives one-fifth of the yield of the land in habus, the "rich widow"⁹⁷, and the others get what falls to them gratuitously. In the amarras or storehouse/silo guardian of the Eastern Rif⁹⁸, we see another functionary of the jma'th, who, through the asuqi (25 kilos for 4 mudd, or measurements of barley)⁹⁹, was in charge of the preparation and custody of individual silos in fixed places, called ma'ar, which came to represent, for Rifians, the collective storehouses of agadir-s (whence the place name Ajdir, existing in both the tribes of Aith Waryaghar and Igzinnayen) of the Moroccan South¹⁰⁰.

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The iziddjifen or family heads were the real directing nucleus of the jma'th; and in the clan, the governing body was made up of the imqqranen or "big ones", who habitually met, with legislative and executive functions, in the market. The clan delegates were collectively known as the Aith-(th)arba'in and the meeting itself, the agrau (pl. igrawn), of the tribe. The Aith(th)arba'in were unappealable. Fqih-s and men of law were mediators, collectors or executors.

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The Aith(th)arba'in, however, made the laws, interpreted them, and obliged people to obey them, without discussion, backtalk or subterfuge. This was a true form of popular representation, the powers of which, although they did not emanate directly from the people in many cases, or through a European-style elective system, were indirectly derived from, and with the tacit consent of, their constituents..... It is a rare person who can produce a document which accredits him as a popular (author's italics) representative, either circumstantial or permanent, but, nevertheless, no one with a better title or more

634 If the matter is one of
623 imposition of a fine, the deliberations are rendered longer, through
614 haggling, and more methodical, because in such an instance custom
619 decrees that half of it (i.e. the fine) goes to those who impose it,
692 the chiefs within the small circle, and the other half, to the injured
681 parties and their kinsmen (the sector, or the whole big outside
circle). 2 & 3

1) War:

634 a) Declaration:--War surges up frequently from agraw meet-
619 ings; at times, a meeting terminates in rifle shots. This may not be
614 a very politic declaration, but, equally, it is not a very rare one.
623 Ordinarily, the separation and departure of those who have come
628 together and convened at a council meeting without having arrived at
721 any agreement is considered tantamount to a declaration of war, which
all the threatening components hastily retire in order to prepare....
Only the later intervention of new emissaries can put off hostilities.
This in itself is uncommon, because from the moment the meeting is
theoretically over, disputes and quarrels begin in fact, and the life
expectancy of such emissaries would thus become extremely slight.

628 b) Fighting:--Usually the plan of attack is instinctive,
721 logical and clear to all: the accusers, being warned and prepared be-
forehand, are the attackers and take the offensive, while the accused,
surprised by the result, are on the defensive. No war chiefs have
• (624) been previously appointed. The objective is clear and simple for
every combatant, namely, to exterminate the opposite group and take
over its property. Very soon combat parties are drawn up, through
reasons of kinship, friendship and geographical proximity; at night,

623 Thus public
182 esteem and the ideas which such deeds provoke in others are regained;
673 they satisfy the mass of the people without having to resort to cru-
687 elty, for.....in a truly humane feeling, note c in the text shows that
685 the author of the crime must have been caught in flagrante delicto.

629 Discounting possible vengeance and not very sure of having succeeded in
623 doing so, note e in the text shows the institution of a popular tri-
554 bunal formed by two neutral individuals, two men who neither take part
671 in the agreement nor are members of the jma'th, but the fact that they
have prestige in it is a maximum guarantee of the workability of the
qanun in question.

623 Furthermore, the jma'th as a social unit is personified not in
621 its mqaddim, in the Arab manner, but, hostile to personal power, in a
triumvirate formed by three of the legislators who took part in the
meeting and who remain obligated to watch over the fulfillment of the
agreement. This executive organ of power is made up of laymen, and it
as much as the aforementioned tribunal is the result of popular election.

671 In the few lines which this qanun has, aside from creating a
624 a code, a tribunal and a police force, all of which are, naturally,
182 gratuitous, it creates a rural exchequer, and all this with a good,
natural and admirable feeling.

182 It restricts, through fear of fines, damages to the small social
671 unit it represents by guaranteeing the safety of property and discard-
626 ing cravings for economic expansion at the expense of member lineages. 35
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671 It creates lineage authorities whose jobs are gratuitous, and,
613 always suspicious, it avoids concentration of power in the hands of one
661 person, a fact which permits neither a shade of tyranny by the latter
182 nor a bastardization of his office.

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689 amicably by irrigation specialists (aquwam, pl. iquwamen). In the
[241] latter instance, these specialists estimated the amount of damage
[242] done, and the individual who caused it had to pay for it.¹²⁰ The only
[627] penalty, most of the time, was indemnity of such damage, through,
above all, small reparation projects. In case a man was also punished
by fining, the fines were converted into improvements in the irrigation
ditches. The irrigators did not make up special communities with
312 their own jurisdiction or functionaries dedicated to the inspection
621 and fulfillment of the agreements, because this rudimentary society
● 624 was not fond of bureaucrats(!).....

312 The difficulty with these irrigation agreements rested primar-
675 ily, more than on the distribution of the flow of water, on rather the
423 outline of the ditch, for which it was necessary to acquire pre-
viously the consent of each one of the property owners on whose plots
of land it ran over; these individuals did not ordinarily give in
unless they themselves were given an irrigation turn; and, in addi-
tion, they made it clear that the ditch was not to cross their land
but to follow the boundaries around it.

312 Irrigation turns, in the instances dealt with here, are simple,
571 and correspond to the same notion which will later be discussed for
[805] the bigger water-courses, and which is based upon the principle of
equitable distribution, with the utilization of natural means to
calculate the time. This is reduced, once the number of turns is
known, to fixing the duration of these and the order in which they
occur. This customarily takes place at the point of origin of the
ditch or dam; once assembled, the irrigators draw lots, by which each
one of them puts down a straw while another, with his back turned,

776 161--Sidi r-Hajj Yusif n S'aid Ikhrif lived in Imnuth (Aith 'Adhiya,
778 of the Aith Bu 'Ayyash) and is buried there, in a tomb surmounted by a
white cupola, on the left bank of the Nkur. He is not one of the
Imrabdhen of the Aith Waryaghar, but has descendants in Imnuth, in the
Thimsaman and in the Axt Tuzin. In the clan of the Axt 'Akki in the
last-mentioned tribe is buried his son Sidi r-Mdur, who gave protection
to the tulba when they gathered at his tomb to read verses from the
Koran. It is said that there was a time in which they stopped praying,
(155) and since then he has not afforded them his protection. Sidi r-Hajj
(178) Yusif has the reputation of being able to cure sick people and to cure
barrenness in women. He is visited on Thursdays, and sacrifices are
made at his tomb.

000 162--These figures date from 1938, at the time of Blanco's survey.

(773) 163--The legend behind Azru n Srith is as follows: once a wedding was
going on in the neighborhood of Thanda Hawa (which functioned as a
gate and grain-silo deposit for the City of Nakur). A foreign saint,
Sidi Birqi, who came from the east and who is now buried on the east
bank of the Nkur River, in the Axt Tuzin, came up to the wedding pro-
cession to ask the people for a little water in order to perform his
ablutions prior to prayer. He was brusquely refused, and because of
this, he turned all the members of the procession, including the bride
on her mule, into stone. To this day, Rifians say that the rock of
Azru n Srith looks like a bride mounted on a mule--and hence its name.

(613) 164--The following groups irrigate from Sidd Ysiyar: Aith Bu Srama of
Izakiren ("True" Aith Bu 'Ayyash, Aith Bu 'Ayyash), Ighmiren (Aith
'Adhiya, Aith Bu 'Ayyash), Ixatshumen (Isrihan, Aith Yusif w 'Ari),
Axt Tuzin, and Imrabdhen n Bu Zwiqa, Aith Habbuqush and Aith Tbir-
hashth (all of Truguth, Thimsaman).

(613) 165--Izakiren is a lineage of the subclan of the "True" Aith Bu 'Ayyash
(614) of the clan of Aith Bu 'Ayyash, and Ighmiren is a lineage of the sub-
clan of the Aith 'Adhiya of the clan of the Aith Bu 'Ayyash. Our notes
read that there are eight turns, rather than seven, for Dharga n
Tufrasht, but these, beyond reading Izakiren and Ighmiren, are un-
specified.

(613) 166--Dharga 'Arridh irrigates for Imrabdhen n Bu Zwiqa (clan of Tru-
(614) guth, of the Thimsaman) and Aith Bu Srama (lineage of Izakiren,
subclan of the "True" Aith Bu 'Ayyash, clan of Aith Bu 'Ayyash).

(614) 167--In the clan of Truguth in the Thimsaman.

168--All of Izakiren in the Aith Bu 'Ayyash.

(613) 169--Our notes state that the water of Bujinn is restricted to lineages
of Truguth, in the Thimsaman: Imrabdhen n Bu Zwiqa, Ims'audhen, Aith
Habbuqush, Dharwa nj-Qa'id 'Allal.

(614) 170--All of the clan of Truguth, Thimsaman. Our notes read, in addi-
tion, that Dharga Iznagen irrigates some land in the Thimsaman which
belongs to 'Abd al-Krim.

104 171--It might be noted here that the aqunwam is functionary, corres-
ponding more or less with the Arabic shaikh al-filaha, who was introduced

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[686] by the Spaniards. If anyone fails to turn up to repair a ditch after
a storm, the fine he pays goes not to the aquwam but to his jma'th,
who buy sugar and tea with it.

006 172--"Subclans" may not be strictly accurate here as a translation,
but it is better than Blanco's "fractions". Ajdir is, as aforemen-
tioned, a community of the subclan of the Aith Ughir Izan of the Aith
Yusif w 'Ari, while the Imhawren are a subclan, in their own right,
of the Aith 'Ari. The Imrabdhen are an entire clan, but in this in-
stance only those subclansmen of the Lower Imrabdhen contiguous to
the Imhawren and Ajdir were involved.

[613] 173--The references are to the lineage of the Aith 'Aru Hmid, subclan
of the Imhawren, clan of the Aith 'Ari.

174--The Sultan of Morocco at this time was Mawlay 'Abd ar-Rahman ibn
Hisham (1822-1859).

175--It is impossible for us to infer today even the clans to which
the first three men belonged, much less their lineages, because of the
antiquity of the qanun (or, in this case, shahada) in question. How-
ever, Muhammad al-'Arusi was probably of the Aith 'Arus or a descendant
of someone who had escaped from a feud in that mountain subclan, and
'Abdallah b. Ahmad Amhawil must have been of the Imhawren subclan of
the Aith 'Ari.

[554] 176--Sriman r-Khattabi of Ajdir, whom the Spaniards made the top qa'id
[648] of all the Aith Waryaghar in 1926. He held this position until 1934-
[631] 35, when, at Blanco's instigation, Waryagharland was divided into three
qaidates of equal size. In 1936 he became Pasha of Villa Sanjurjo (al-
Husaima), a position he held until his death in 1950.

[614] 177--Of the clan of the Aith 'Abdallah, but lineage affiliation is
unspecified.

178--Both the qadi and the two 'adul can be identified as being of the
clan of the Aith Yusif w 'Ari.

[224] 179--In Moroccan Arabic, rayah or siyada are the usual terms for "hunt-
[113] ing"; in Rifian, however, the word is dhingmarth, while hunter is
angmar, pl. ingmarn. A very summary description of Rifian hunting
techniques, as practiced for the most part in the Igzinayen, and with
rifle, net or trap, is in Coon, op. cit., 1931, pp. 37-38; and a summary
of Blanco's own data is also contained in R. P. Esteban Ibanez, "El
Derecho Consuetudinario en la Sociedad Bereber", Institut International
de Sociologie, XVIIIe Congrès, Nuremberg 1958, Sept. 16-17, 1958
(mimeographed).

180--This is not literally true, for like all Moroccan Muslims, Rifians
are extremely fond of mutton (or even goat) tajins, or olive-oil based
vegetable stews.

181--The distribution of the meat of a dead (or sacrificed) animal is
called r-uzi'ath (Ar. l-wuzi'a), and every member of the jma'th is
entitled to his share.